

December 17, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 04-0128

J. Thomas Franco, Esquire
Gerald A. Sniderman & Associates
Attorneys and Counselors at Law
26339 Woodward Avenue
Huntington Woods, Michigan 48070

Dear Mr. Franco:

This is in response to the appeal you filed on behalf of your client, Victory Cab, Inc. ("Victory"). We have carefully reviewed the material from the Wayne County Human Relations Division (WCHRD) and have concluded that the denial of Victory's certification as an eligible Disadvantaged Business Enterprise (DBE) under criteria set forth in 49 CFR Part 26 ("the Regulation") is justifiable.

Your appeal is denied based upon a determination that your client is a not for profit business.

The specific reasons for the denial of your appeal include the following:

The Regulation provides at §26.73(d) that **"Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs."**

The record states that Victory is a cooperative established to provide taxicab services primarily to and from Wayne County Metropolitan Airport. According to the state of Michigan Department of Commerce, Victory was incorporated in July 3, 1972 as a nonprofit corporation. Article II of the (Non-Profit) Articles of Incorporation states that the purpose or purposes for which the corporation is formed are as follows: "To furnish all necessary services to stockholding owners of taxicabs, freight vehicles, common carriers or other automotive carriers whether the same be overland carriers of passengers or goods, on a participation-cooperative basis and to purchase, lease, or rent buildings, lands, warehouses, garages, etc., for the benefit of shareholders and to purchase for resale to the stockholders all such items of equipments, parts, tires and other items necessary or incidental to the

transportation business of the stockholders and to do all other things necessary and reasonable to carry out the purposes for which this corporation is formed. Stockholders are not to receive dividends.

Victory Cab's By-laws state in Article I, section 3. No Dividends. "The purpose of the Corporation is not to make a profit. Dues shall be a source of revenue for the stated purpose of the Corporation. Any accumulation of excess funds from this, or any other source, may, at the discretion of the Board of Directors, be refunded to shareholders on a pro rata basis of dues paid or result in a reduction of future dues. Under no circumstances, shall any refund of dues exceed the dues charged during the most recent twelve (12) month period. The uniform service fee charged to both members and associates shall be nonrefundable."

Your letter of rebuttal states that "Victory is organized as a cooperative corporation under the General Corporation Act of Michigan, specifically MCL 450.98, et seq...Subsequent to my 1994 correspondence, Victory was certified as a DBE. There have been no pertinent amendments of either that statute or the charter of Victory since 1994. As I recall, one rather critical determinant was that Victory has never qualified or attempted to qualify, will never and could never attempt to qualify, for exemption from taxation under the Internal Revenue Code (IRC 501(c), or any other provision)." The record information supports WCHRD's determination that Victory does not meet the qualifications of §26.73(d).

In summary, the information provided cumulatively supports a conclusion that Victory does not meet the criteria as required for DBE certification under 49 CFR Part 26. Therefore, the company is ineligible to participate as a DBE on WCHRD's Federal financially-assisted projects. This determination is administratively final as of the date of this letter.

Sincerely,

Joseph E. Austin, Chief
External Policy & Program Development Division
Departmental Office of Civil Rights

cc: WCHRD